

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 93-205

In the Matter of

Amendment of Section 73.202(b). RM-8270  
Table of Allotments.  
FM Broadcast Stations  
(Donalsonville, Georgia)

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: November 3, 1993; Released: December 8, 1993

By the Assistant Chief, Allocations Branch:

1. Pursuant to the request of Jerry E. White and Donald E. White, D/B/A Seminole-Decatur Radio Company ("Seminole"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 4851 (1993), proposing the allotment of Channel 298A to Donalsonville, Georgia, as that community's second local FM service. Seminole filed comments restating its intention to apply for Channel 298A, if allotted.<sup>1</sup> Clyde and Connie Scott D/B/A EME Communications ("EME"), filed an opposition to the Donalsonville proposal. Petitioner filed reply comments.

2. In opposing comments EME argues that the Donalsonville proposal will adversely impact the allotment of Channel 299C3 at Sasser, Georgia, and should be denied. EME states that Seminole's petition should be dismissed for failure to comply with Section 1.52 of the Commission's rules, which requires appropriate verification. EME also contends that petitioner's claim to apply for a construction permit, and upon grant, shall promptly construct its station, is inherently suspect and may not be credited, since Seminole previously petitioned the Commission to allot Channel 254A at Smithville, Georgia, made a representation that it would apply for the channel, and did not file an application. See *Americus, Fort Valley & Smithville, Georgia*, MM Docket No. 90-325, 6 FCC Rcd 942 (1991). Therefore, EME states that where a party fails to adhere to its material representations, the Commission no longer takes that party's statement at face value, citing *Richard Bott II*, 8 FCC Rcd 4974 (1993). EME also states

that Seminole's proposal is technically flawed as well. EME states that the Donalsonville rule making is short spaced to the Sasser reference points. EME claims that if the Donalsonville proposal is adopted, it may not be possible to build and operate a station at Sasser, because the Donalsonville proposal will cause a 92% reduction in the area to locate a transmitter site for Channel 299C3 at Sasser. EME states that it has conducted a check with all land owners within the significantly reduced clear area to locate a transmitter site for Channel 299C3 at Sasser, and that "[n]o single owner was willing to either lease or sell suitable land within the area for a transmitter site."

3. In reply Seminole states that EME's only valid argument is that land for a site for Sasser may not be available within the useable area of Channel 299C3. However, Seminole states that EME fails to offer any proof that "[n]o single owner is willing to either lease or sell suitable land within the area for a transmitter site." Seminole contends that EME has engaged in an undeserved personal attack and has failed to present all it knew in the Smithville proceeding in a deliberate attempt to mislead the Commission. Seminole contends that EME incorrectly stated that Channel 254A was allotted to Smithville. It states that although Seminole proposed Channel 254C3, the Commission allotted Channel 295A with a substantially different useable area from the original site. Seminole also states that it has been a party to applications for one AM and one FM and two low power TV construction permits, and all but one has been built.

4. We have carefully considered all the information before us. Both Seminole and EME acknowledge the fact that land may not be available within the useable area of Channel 299C3 for towers to accommodate both the Donalsonville and Sasser allotments. We also find that the allotment of Channel 298A to Donalsonville would be short-spaced to an application for Channel 299C3 at Sasser, Georgia. Therefore, in order to resolve the technical conflicts between Seminole's proposal to allot Channel 298A to Donalsonville and an application for Channel 299C3 at Sasser, Georgia, we have sought an alternate channel for Donalsonville. An engineering analysis has revealed that Channel 271A can be allotted at Donalsonville, Georgia, as that community's second local FM service. The Commission may allot an alternate channel on its own motion in order to resolve conflicts between proposals. See *Pinewood, South Carolina*, 5 FCC Rcd 7609 (1990). In addition, this action conforms to the Commission's policy of accommodating pending applications wherever possible. See *Conflicts Between Applications and Petitions for Rule Making to Amend the FM Table of Allotments (MO&O)*, 8 FCC Rcd 4743 (1993).<sup>2</sup>

5. We believe the public interest would be served by the allotment of Channel 271A to Donalsonville as that community's second local FM service. Channel 271A can be allotted to Donalsonville in compliance with the Commis-

<sup>1</sup> In response to the *Notice*, Petitioner provided an affidavit verifying the statements in its petition.

<sup>2</sup> As for EME's allegations regarding Seminole's lack of candor the Commission has stated before, "The mere fact that a party in one proceeding filed a pleading in which it states an interest in applying for a station, but subsequently fails to do so, is not sufficient evidence, by itself, of misrepresentation. On the other hand, where there is direct evidence of misrepresentation, or evidence of a pattern of filings in which a party expresses an interest in an allotment and either voluntarily dismisses its

proposal prior to action in the allotment proceeding or fails to file an application, a question may arise as to whether the party is advancing proposals in good faith." We see no evidence of such a pattern in this case and accordingly find that no lack of candor is involved here. We reiterate that abuse of our processes is considered a material misrepresentation and may subject a petitioner to prosecution pursuant to Commission rules. See *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, 3915 (1990).

sion's minimum distance separation requirements with a site restriction of 7.2 kilometers (4.5 miles) northwest,<sup>3</sup> in order to avoid short-spacings to a construction permit for Station WWSG(FM), Channel 271A, Sylvester, Georgia, and the licensed site for Station WPHK(FM), Channel 272A, Blountstown, Florida.

6. Accordingly, pursuant to the authority contained in Sections (4i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED. That effective **January 24, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Donalsonville, Georgia	271A, 292A

7. The window period for filing applications for Channel 271A will open on **January 25, 1994**, and close on **February 24, 1994**.

8. IT IS FURTHER ORDERED. That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau (202) 632-0394.

#### FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley  
Assistant Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

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<sup>3</sup> The coordinates for Channel 271A at Donalsonville are North

Latitude 31-05-32 and West Longitude 84-55-55.